



Tobacco Control
Legal Consortium



E-Cigarettes and Other Tobacco Products

Arizona Tobacco Policy Summit
October 27, 2015



Public Health
Law Center

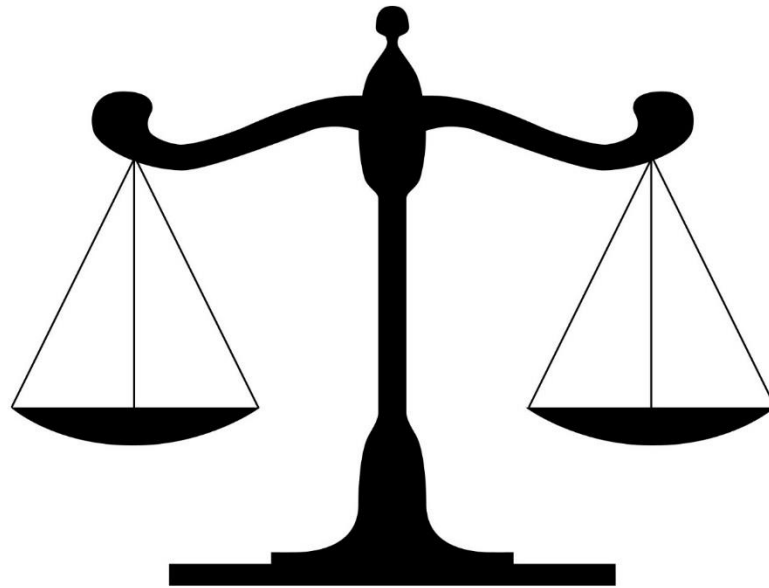
Road Map for this Presentation

- My Organization(s)
- E-Cigarettes and OTPs
- Federal Regulation
- State and Local Regulation
- Resources



Tobacco Control Legal Consortium

Attorneys supporting tobacco control policy change.



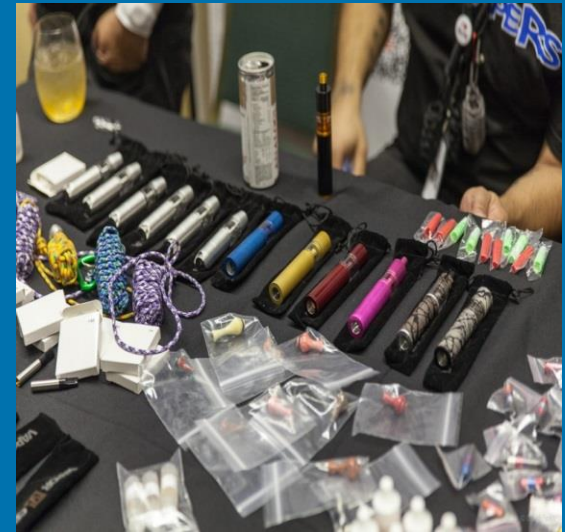
What is Legal Technical Assistance?

- Education
- Legal Interpretation and Research
- Develop Policy
- Litigation Support
- It's free and call early!
- We don't represent clients or lobby.

Other Tobacco Products



E-Cigarettes



E-Cigarettes, cont'd



WELCOME TO
SIMONSON
STATION STORES

SIMONSON STATION 701-746-5801
310 GATEWAY DR
GRAND FORKS ND

Descr.	Qty	amount
<CUSTOMER COPY>		
T TAX MDSE	1	79.95
T TAX MDSE	1	7.99
Sub Total		87.94
Tax		5.94
TOTAL		93.88
CREDIT		88.00

CARD TYPE: Visa Card



WELCOME TO MAYNARDS AMOCO
715-483-5950
CARWASH PROBLEMS 877-226-1938

Maynards BP Amoco, 8159766
2091 Glacier Drive
Saint Croix Falls, WI 54024

08/13/2011 1:03:10 PM
Register: 2 Trans #: 4002 Op ID: 8
Your cashier: Jasmine

KLARBRUNN LT	\$1.09	99
GRIP N GO CHOCOLATE MILK	\$1.29	99
SMOKERS #1 CHOICE	\$8.09	11
Subtotal =	\$10.47	
Tax =	\$0.44	
Total =	\$10.91	
Change Due =	\$-9.10	
Cash	\$20.01	

Market Growth

- 2012 Sales: approx. \$500 Million
- 2013 Sales: approx. \$1.7 Billion
- Small part of tobacco industry, but considered a growth segment
 - Some analysts: sales of e-cigarettes will overtake conventional cigarettes within 10 years



Big Tobacco Enters the Game



REUTERS

Lorillard Inc. Announces Acquisition of Blu Ecigs

Wednesday, 25 Apr 2012 07:03am EDT

WINSTON-SALEM
JOURNAL

Reynolds developing new smokeless products

Posted: Sunday, July 29, 2012 1:00 am | Updated: 1:59 pm, Wed Dec 12, 2012.

Richmond Times-Dispatch

Altria to sell an electronic cigarette

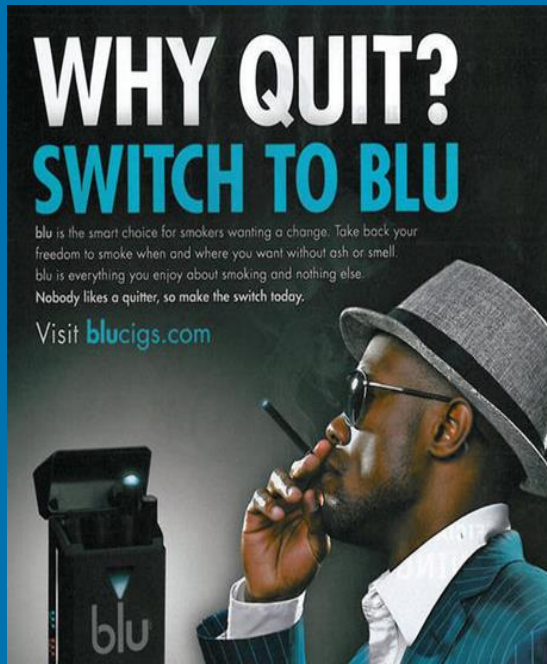
Posted: Friday, April 26, 2013 12:00 am | Updated: 12:18 am, Sat Apr 27, 2013.

Health Concerns

- Appealing to kids & gateway to cigarettes
- Unproven cessation claims
- Unregulated manufacturing
 - Safety of product and nicotine solutions
 - Lack of manufacturing standards & quality control
- Preliminary data only on health risks
- Marijuana



Marketing Concerns



Tobacco Control Act of 2009

“This chapter shall apply to all
cigarettes,
cigarette tobacco,
roll-your-own tobacco, and
smokeless tobacco

and to any other tobacco
products that the Secretary
by regulation deems to be
subject to this chapter.”



Proposed Deeming Regulation

**U.S. Food and Drug Administration**
Protecting and Promoting *Your Health*

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Tobacco Products     en Español

Home > Tobacco Products > Product Requirements, Marketing & Labeling

Product Requirements, Marketing & Labeling

[▶ Deeming – Extending Authorities to Additional Tobacco Products](#)

[Labeling](#)

[Marketing & Advertising](#)

[Tobacco Product Review & Evaluation](#)

Deeming – Extending Authorities to Additional Tobacco Products

Despite decades of efforts to reduce tobacco use, it continues to be the leading cause of preventable disease and death in the United States. To address this public health problem, FDA proposes extending its authority to cover additional products that meet the definition of a tobacco product under the proposed rule: Tobacco Products Deemed To Be Subject to the Food, Drug & Cosmetic Act (Deeming).



Currently FDA regulates cigarettes, cigarette tobacco, roll-your-own tobacco and smokeless tobacco. Proposed newly “deemed” products would include electronic cigarettes, cigars, pipe tobacco, certain dissolvables that are not “smokeless tobacco,” gels, and waterpipe tobacco.

Once the proposed rule becomes final, FDA will be able to use powerful regulatory tools, such as age restrictions and rigorous scientific review of new tobacco products and claims to reduce tobacco-related disease and death.

Automatic Requirements

	E-Cigs & other newly-covered products
Regulation of adulterated products	Effective date of Final Rule
Required disclosure of measure/contents; premarket approval	24 mos after Final Rule issued
Prohibition on false or misleading advertising	Effective date of Final Rule
Required disclosure of ingredients, substances, compounds and additives	6 mos after effective date of Final Rule
Required disclosure of harmful and potentially harmful constituents	36 mos after effective date of Final Rule
Required disclosure of health-related documents	6 mos after effective date of Final Rule
Required registration of manufacturers	By end of calendar yr in which Final Rule issued (if issued in 2nd half of year, FDA will designate a date)
Required disclosure of product lists	Upon submission of new product applications
Prohibition of the use of “light,” “mild,” “low,” or similar descriptors	12 mos after effective date of Final Rule

All of these currently apply to cigarettes, cigarette tobacco, smokeless tobacco, & roll-your-own tobacco.

Additional Requirements

	Cigarettes	Smokeless Tobacco	Cigars	E-Cigarettes and Other Newly-covered Products
Minimum purchase age of 18	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
No vending machine sales	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Allowed in adults-only facilities	Allowed in adults-only facilities
No self-service displays	Allowed in adults-only facilities	Allowed in adults-only facilities	<input type="checkbox"/>	<input type="checkbox"/>
Minimum package size requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No loosies	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No free samples	<input checked="" type="checkbox"/>	Allowed in adults-only facilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
No characterizing flavors	Menthol and tobacco allowed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Warnings on packages and ads	9 Rotating warnings	4 Rotating warnings	4 Rotating warnings	1 Static warning re: containing nicotine, which is addictive
No brand-names sponsorship of sporting and cultural events, no brand names on non-tobacco items	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Required notice of ads in any non-traditional medium	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Missed Opportunities



Flavored Tobacco Products

Television Advertising

Internet Sales

Brand Name Sponsorship


Self-Service Displays

Minimum Package Size

Child-Resistant Packaging



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FDA Tobacco Action Center

In June 2009, President Obama signed the Family Smoking Prevention and Tobacco Control Act, giving the Food and Drug Administration unprecedented authority to protect the public health by regulating tobacco products. The ultimate success of the law will depend on an active and engaged public health community that works to support the FDA with the best evidence and input available.



Take Action Today

Tell the FDA to Require Child-Resistant Packaging and Poisoning Warnings

The FDA is accepting comments to determine whether or not it should require child-resistant packaging and/or poisoning warnings for products that contain liquid nicotine. Submit your comments by August 31, 2015.

New FDA Policy Puts Industry Interests Before Public Health

Despite the 2009 Tobacco Control Act, new and modified tobacco products are being sold without the FDA's authorization. While the FDA could enforce the law, it is allowing the tobacco industry to continue selling these unauthorized products.

Tell the FDA to Address Illicit Trade

Public health groups are petitioning the FDA to implement a track and trace program to combat illicit trade. Submit your comment supporting this petition.

[Sign up](#) to receive our FDA Tobacco Action Alerts notifying you of opportunities to strengthen FDA regulation of tobacco.

State and Local Authority

Limitations on FDA action:

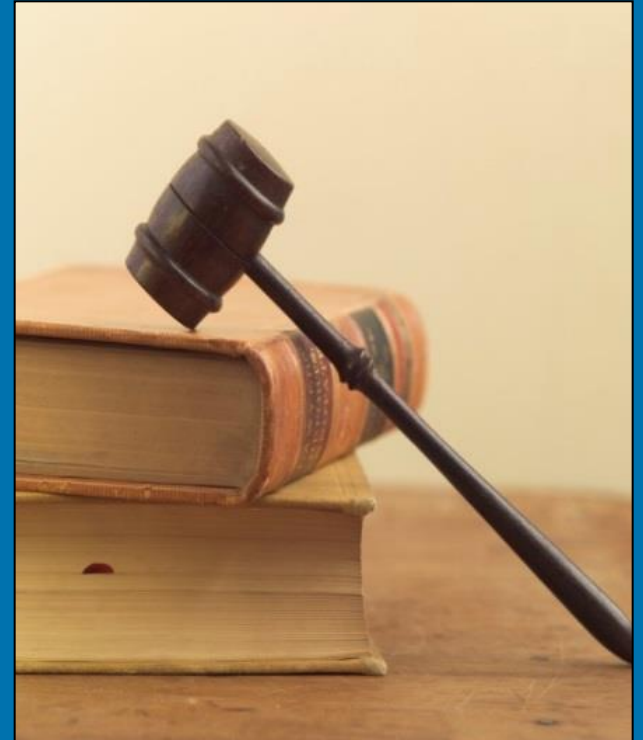
- No smoke-free
- No taxing authority
- Cannot ban a class of products (e.g., all cigars)

Limitations on state and local action:

- Tobacco product standards
- Premarket Review
- Labeling
- Good manufacturing standards
- Modified Risk Tobacco Products

State and Local Laws

- Most states prohibit e-cigarette sales to minors
 - AZ Stat. Sec. 13-3622
- A few states include e-cigarette in statewide smoke-free laws
 - Arizona does not
 - Tempe Code Sec. 22-41: Smoking includes “Using an electronic smoking device designed for the purpose of inhaling and exhaling aerosol or vapor.”
- A number of localities restrict sale of flavored products
 - Arizona does not



Add E-Cigarettes to Smoke-Free Laws

Public policy rationale:

- Health impact of second-hand aerosol
- Social norm impact
- Enforcement challenges

Drafting tips:

- Add to existing law
- Include all devices
- Do not exempt cessation devices



Restrict Youth Access

- No sales to minors
- No free samples
- No self-service



Child-Resistant Packaging

- Illinois
- Minnesota
- New York
- Vermont
- ...and many more this year!
- FDA opportunity for comment

First Child's Death From Liquid Nicotine Reported as 'Vaping' Gains Popularity

Dec 12, 2014, 5:40 PM ET

By GILLIAN MOHNEY



A variety of electronic cigarette flavors are viewed for sale at an electronic cigarette store, June 10, 2013, in New York City.

Spencer Platt/Getty Images

NEXT VIDEO »

Why Americans Can Not Get The Same Effective Sunscreen Protection Europeans Can

AUTO START: ON OFF

A toddler from upstate New York could be the first child to die from **liquid nicotine**, the substance used in e-cigarettes, poisoning in the U.S., concerning health officials as e-cigarettes continue to rise in popularity.

Police reported that the 1-year-old child died after ingesting liquid nicotine at a home in Fort Plain, New York, on Tuesday. The child was found unresponsive and rushed to a hospital where he was

Additional Policy Options

- Restrict the sale of flavored e-cigarettes (including menthol)
- Limit the number of vape shops
 - Retail licensure
 - Development moratorium
- Restrict marketing
- Tax and Price Regulations
 - Will discuss these tomorrow!



Lessons Learned

- Build a robust, state-specific evidence base in support
- Anticipate opposition arguments; prepare data-driven responses
- Consult an attorney early in the drafting process
 - Each state's statutory code is different
 - Definitions are critical
 - Concise language
- Develop a plan with enforcement folks
 - Robust enforcement options; well-planned implementation
 - Testing and verification of claims
- Watch for preemption provisions



Resources



www.PublicHealthLawCenter.org

E-Cigarette Regulations - Missouri

Are e-cigarettes included in the definition of "Tobacco Products"?

No

What is the state's legal definition of an e-cigarette?

Alternative Nicotine Product means "any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. 'Alternative nicotine product' does not include any vapor product..." [Mo. Rev. Stat. § 407.925\(1\) \(2015\)](#)

Vapor Product means "any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit ... [including] the container of nicotine in a solution or other form... 'Vapor products does not include any alternative nicotine product or tobacco product.'" [MO Rev. Stat. § 407.925\(12\) \(2015\)](#)

Is there a state excise or special tax (non-sales tax) placed on e-cigarettes?

N/A

What regulations are in place for e-cigarette packaging?

N/A

U.S. E-Cigarette Regulations - 50 State Review

The following is a snapshot of the U.S. landscape of e-cigarette regulation as of May 22, 2015. The information below was based on a 50-state (plus Washington, D.C.) survey of current state statutes pertaining to e-cigarette regulations in the following areas: definition of "tobacco product," taxation, product packaging, youth access/other retail restrictions, and smoke-free air legislation. Please click on a state to see the regulations in place as of May 22, 2015.

[Click here to download the complete data set. \[PDF\]](#)



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